

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARY Jewelers, LLC.,)
Plaintiff,)
)
v.) CIVIL ACTION NO. 04-CV-10281 EFH
)
IBJTC Business Credit Corp. and)
David Molinario,)
Defendants.)

**PLAINTIFF ARY JEWELERS, LLC.'S MOTION
FOR ADDITIONAL DISCOVERY**

TO THE UNITED STATES DISTRICT COURT:

COMES NOW ARY Jewelers, LLC. ("ARY"), Plaintiff in the above-styled and captioned matter and files this its Motion for Additional Discovery and in support thereof would respectfully show the following:

1. This lawsuit involves a tortious interference allegation between Plaintiff and a potential lender, Defendant IBJ, in which it is alleged that Defendant IBJ, wrongfully and tortiously forwarded information about its customer to a competing potential lender.
2. This matter was initially set for trial by this Honorable Court for February, 2006, with an initial fact discovery cut-off date of March 14, 2005. The fact discovery, expert designation, and other deadlines were changed pursuant to the parties' Assented to Motion to Extend the Time for Fact Discovery. Importantly, pursuant to the new scheduling order entered after this motion, Defendants Expert Designation and report deadline was on or about October 28, 2005. Plaintiff timely met its experts' designation deadlines. At the request of the Defendant, much discovery was postponed and, Plaintiff allowed the Defendant to designate its experts and provide reports ninety

days after the Court entered its order on Defendants' Motion for Summary Judgment. As this Honorable Court is well aware, Defendants' Motion for Summary Judgment has now been heard and this Honorable Court has denied same as to the tortious interference claim. Plaintiffs were ready and able to go to trial in May; however, at the urging of Defendant, and again with counsel for Plaintiff once again accommodating Defendant, the trial date was pushed back and reset to September 25, 2006. Because of another trial setting in a Texas state court, the trial has now been set for December 11, 2006.

3. Given Plaintiff's continued accommodations of Defendants' scheduling requests, the latest trial setting, and the denial of Defendant's Motion for Summary Judgment, Plaintiff requests this additional limited discovery. Plaintiff is entitled to the same and there is no reason for Defendants to refuse allowing such additional limited discovery.

4. Plaintiff requests the following additional discovery:

- a. Production of documents requested much before the original discovery deadline and made the basis of Plaintiff's Motion to Compel attached hereto as Exhibit A. Note that these documents are long requested and continually not produced by the Defendant includes such basic and necessary documents as Defendant IBJ's policies and procedures for the time period in-question. Concurrent with the production of these previously requested documents, Plaintiff would request the deposition of Defendant IBJ's custodian of records.
- b. Plaintiff would seek and request the deposition of Steven Cole, who executed a key affidavit in support of Defendants' Motion for Summary Judgment and testified to a meeting that Plaintiff disputes even took place, but is a key remaining fact issue per

this Honorable Courts' Order Denying Defendants' Summary Judgment Motion. Mr. Cole's affidavit is attached hereto as Exhibit B. Note that prior to the initial discovery cutoff and prior to the submission of Cole's affidavit, Defendant's counsel had represented that he had had little or no dealings with ARY/Krigel's and thus no deposition was taken earlier.

- c. Plaintiff also needs to take the deposition of Scott Krigel, who is alleged by the Defendants to be an attendant at an alleged meeting before February 28, 2001 between Krigel, Steven Cole, and Gohar Husain. Thus, Mr. Scott Krigel is a key witness and should be deposed.

For the above reasons and so that the best interests of justice may be served, Plaintiff prays that this Honorable Court allow the above additional discovery and enter an order accordingly:

- 1. Defendants shall produce documents requested before the original discovery deadline and made the basis of Plaintiff's Motion to Compel as follows:
 - A. Defendants' objections to Plaintiff's Request for Production of Documents shall be stricken;
 - B. Defendants shall produce all relevant documents, including but not limited to all of Defendants' policies and procedures as requested in place at the time of the occurrences made the basis of this lawsuit;
 - C. Defendants shall provide Plaintiff with a proper privileged document log;
 - D. Defendants shall produce their responsive documents identified by category and as kept in the regular course of business; and
 - E. Plaintiff's counsel be allowed to inspect Defendants' original documents as

kept in the regular course of business

F. All of the foregoing shall be accomplished within fourteen (14) days of the entering of an Order by this Court;

2. Plaintiffs may depose Defendant IBJ's custodian of records;
3. Plaintiffs may depose Steven Cole; and
4. Plaintiffs may depose Scott Krigel.

The depositions of Mr. Cole and Mr. Krigel shall be conducted at a time mutually agreeable to all parties. Additionally, Defendants shall make the custodian of records available within sixty days of the entry of the Court's order. Plaintiff prays for all additional and further relief to which it may show itself justly entitled.

Respectfully submitted,

THE CARRIGAN LAW FIRM, L.L.P.

By:

Stephen P. Carrigan (Admitted Pro Hac Vice)
2 Houston Center
909 Fannin, Suite 1575
Houston, Texas 77010
(713) 739-0810 (telephone)
(713) 739-0821 (telefax)
Attorney-in-Charge for Plaintiff

OF COUNSEL:

THE CARRIGAN LAW FIRM, L.L.P.
Jill L. Groff (Admitted Pro Hac Vice)
2 Houston Center
909 Fannin, Suite 1575
Houston, Texas 77010
(713) 739-0810 (telephone)

MAHENDRU, P.C.
Ashish Mahendru BBO#647661
1111 Bagby, Suite 2000
Houston, Texas 77002
(713) 571-1519 (telephone)
(713) 651-0776 (telefax)